

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM DURHAM, JR.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 04-297 Erie
)	
CITY AND COUNTY OF ERIE, et al.,)	
)	Electronically Filed
Defendants.)	

TACKETT'S RESPONSE TO OBJECTIONS

AND NOW, comes Defendant Tackett, by his attorneys, Thomas W. Corbett, Jr., Attorney General, Kemal Alexander Mericli, Senior Deputy Attorney General, Susan J. Forney, Chief Deputy Attorney General, Chief Litigation Section, who submits the following discussion, incorporating by reference his brief in support of his motion for summary judgment (Docket number 59):

At plaintiff's first trial at which he was convicted Mr. Tackett, a Pennsylvania State Police (PSP) criminalist, testified concerning the results of the DNA testing of a vaginal swab that was taken from the complaining witness as part of the rape kit that was done on her. However, Tackett did not do the DNA test on the swab at his lab site. A Mr. Emerick working at another PSP forensic lab site instead performed that task, and consequently wrote a lab report on the results he found. At Mr. Durham's first trial, Tackett merely testified as a witness as to the

contents of Emerick lab report and their relevance to the issue of determining whether Durham had had sexual intercourse with the woman.

It is difficult to see how this could have conceivably violated plaintiff's civil rights since his apparently successful defense at the retrial at which he was acquitted was consent. Nevertheless, Mr. Durham has never claimed that Tackett fabricated the DNA test results, nor could he for the simple reason that it was Emerick not Tackett who did the DNA test, got the definitive results and then wrote the lab report. All Tackett did was testify as witness to what Emerick said were the results he had found and what they meant.

So this is not, and never has been, a case in which Tackett, as a former scientist, was accused of fabricating incriminating evidence or suppressing exculpatory evidence as was the case in Pierce v. Gilchrist, 359, F.3d 1279 (10th Cir. 2004). Tackett was just a witness for the prosecution who is now apparently, although this remains unclear, accused by Mr. Durham of committing perjury at his first trial.

As the summary judgment brief demonstrates in detail, Briscoe v. LaHue, 460 U.S. 325 (1983) precludes the claim in all its conceivable permutations.

WHEREFORE, Mr. Durham's objections ought to be DENIED.

Respectfully submitted,

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Date: February 20, 2007

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Tackett's Response to Objections was served upon the following via electronic/first-class mail on February 20, 2007.

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